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Nos. 130-131

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

HARRY B. MITCHELL, FRANCES PERKINS, ARTHUR S. FLEMMING, INDIVIDUALLY AND AS MEMBERS OF THE CIVIL SERVICE COMMISSION, *Petitioners*

v.

JACK W. COHEN

HARRY B. MITCHELL, FRANCES PERKINS, ARTHUR S. FLEMMING, INDIVIDUALLY AND AS MEMBERS OF THE CIVIL SERVICE COMMISSION, *Petitioners*

v.

HARRY W. HUBICKEY

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR RESPONDENTS

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OPINIONS BELOW

Both courts below held that each respondent is entitled to preference under the Veterans' Preference Act of 1944. The opinion of the District Court for the District of Columbia is reported at 69 F. Supp. 54 and

will be found both at R. 44-45 and R. 59-60. The opinions for the United States Court of Appeals for the District of Columbia are reported at 160 F. (2d) 915 and will be found at R. 62-71.

JURISDICTION

The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A. § 347). Certiorari was granted on October 13, 1947.

THE QUESTION PRESENTED

Whether respondents, who petitioners have conceded served on active duty as temporary members of the Coast Guard Reserve, a branch of the armed forces of the United States, during World War II and were separated therefrom under honorable conditions, are "ex-servicemen" within the meaning of Section 2 of the Veterans' Preference Act of 1944, and hence entitled to "preference ratings" as provided in that Act.

STATUTES INVOLVED

The question presented requires an interpretation of Section 2 of the Veterans' Preference Act of 1944 (58 Stat. 387, 5 U. S. C. A. § 851), which is set forth in the Appendix, p. 28.

Pertinent portions of the Coast Guard Auxiliary and Reserve Act of February 19, 1941 (55 Stat. 12, 14 U. S. C. A. § 301), supplementing portions printed at the back of petitioners' brief, are also set forth in the Appendix, p. 29.

STATEMENT

These are actions for injunctions and declaratory judgments to require the members of the Civil Service Commission to give these respondents "preference

ratings" under the Veterans' Preference Act of 1944. Respondent Cohen was discharged from Government service due to general reduction in force after having claimed and been denied veterans' preference (R. 2, 10); while respondent Hubickey, at the time suit was filed, had been denied preference and was threatened with discharge due to reduction in force (R. 47, 56). The cases were tried on cross motions for summary judgment and the facts are not in dispute.

Petitioners admitted by their pleadings (R. 1-2, 10, 46-47, 56) and concede that each respondent

1. Served on active duty;

2. Served in a branch of the armed forces of the United States;

3. Served during a war;

4. Has been separated under honorable conditions.

The facts of record are, accordingly, primarily of significance insofar as they bear on the question whether respondents are "ex-servicemen" within the meaning of the Act.

Respondents were temporary members of the Coast Guard Reserve (R. 1-2, 9-10, 15, 46-47, 54, 56). This Reserve was authorized by the Coast Guard Auxiliary and Reserve Act of February 19, 1941 (55 Stat. 12, 14 U. S. C. A. § 301).

By statute the Coast Guard was created as "a military service" and constitutes "a branch of the land and naval forces of the United States" (14 U. S. C. A. § 301). In accordance with the statutory authorization, the President, by Executive Order No. 8929, on November 1, 1941, directed that the Coast Guard operate as part of the Navy subject to the orders of the Secretary of the Navy (6 Fed. Reg. 5581).

The Coast Guard Auxiliary and Reserve Act provides that "The Reserve shall be a component part of the Coast Guard" (Sec. 302) and that "The Reserve . . . shall be a military organization administered by the Commandant." (Sec. 304) The Reserve was established for the stated purpose of providing "a trained force of officers and enlisted personnel which, added to the regular personnel of the Coast Guard, will be adequate to enable that service to perform such extraordinary duties as may be necessitated by emergency conditions." (Sec. 301) In subsequent sections it is specified that the members of the Reserve "shall be vested with the same power, authority and privileges as members of the regular Coast Guard of similar ranks, grades or ratings"; and shall be subject to the laws, regulations and orders for the government of the Coast Guard. The enrollment of temporary members of the Reserve was specifically authorized. The Commandant, with the approval of the Secretary of Navy, was empowered to enroll temporary members for full time or part time or intermittent active duty, with or without pay, to define their powers and duties, and to confer the same ranks, grades and ratings as are provided for the personnel of the regular Reserve (Sec. 307).

Respondent Cohen was a temporary member of the Coast Guard Reserve serving from April 13, 1944, to September 5, 1945, and was on active duty on 58 days (R. 1-2, 10, 15). He held the rank of coxswain when disenrolled (R. 1-2, 10). Respondent Hubickey, who disenrolled with rank of seaman first class, served in the Reserve from October 18, 1944, to September 30, 1945, and was on active duty 32 days (R. 46-47, 54, 56). Respondents enrolled in the Reserve for the duration of the war and were assigned to the Volunteer Port

Security Force after taking the prescribed oath of allegiance (R. 6-8, 51-53). Both respondents were separated from membership in the Reserve under honorable conditions (R. 1, 10, 46, 56).

There were approximately 70,000 temporary members of the Coast Guard Reserve enrolled during World War II (R. 13, 15). Their average age was over 40 and their duties varied (Hearings H. R. 1389, 80th Cong., 1st Sess., April 18, 1947, p. 24). At the outbreak of the war some of them patrolled off the coasts and were subject to combat (R. 40). More customarily they performed sentry duty on docks and bridges, patrolled harbors and protected military and industrial shore establishments against sabotage (R. 14; Hearings H. R. 1389, 80th Cong., 1st Sess., April 18, 1947, p. 24). The work was frequently hazardous in nature. Many temporary Reservists were injured and as early as June 1944 at least 39 had died as a result of injuries received in line of duty (House Report No. 1686, 78th Cong., 2nd Sess., 1944).

Following his enrollment by taking the usual military oath (R. 8, 53), each respondent wore the regular uniform of the Coast Guard while on active duty, gave military orders appropriate to his rating and was subject to military discipline. His Enrollment and Active Duty Assignment provided that he be on active duty as directed for a minimum of 12 hours per week (R. 6, 51). While respondents were subject to call at any time for unlimited periods of active duty (R. 6, 51), in fact they served only part time and without compensation except for uniform and travel allowances, and subsistence and quarters, in kind, while on active duty, retaining their civilian jobs with the War and Navy Departments respectively (R. 2, 12, 47). They were not exempt from Selective Service (R. 7, 52). Re-

spondents' status while on active duty is succinctly stated in the following excerpt from their respective Enrollment and Active Duty Assignments:

> "Your military status as a member of the U. S. Coast Guard Reserve shall attach during periods when you are actually engaged on active duty or en route to and from duty. In the performance of your duty as a temporary member of the United States Coast Guard Reserve, you are vested with the same power and authority as members of the regular Coast Guard of similar rank, grade, or rating. You shall be subject to the laws, regulations, and orders for the government of the Coast Guard and to disciplinary action for offenses committed while subject thereto, in accordance with the provisions of Section 209 of the Coast Guard Auxiliary and Reserve Act of 1941, as amended." (R. 6, 51)

Temporary members of the Coast Guard Reserve were entitled to preference under the rules of the Civil Service Commission in effect immediately prior and subsequent to the effective date of the Veterans' Preference Act of 1944 (R. 3-5, 10, 16-19, 48-50, 56). The Commission withdrew the preference, on the suggestion of the Navy (R. 17), sometime after the Act became operative. Respondents thereafter applied for preference in the prescribed manner (R. 2, 9-10, 47, 54, 56), were refused (R. 2, 9-10, 47, 54, 56) and initiated the present litigation.

SUMMARY OF ARGUMENT[1]

It is not disputed that respondents served on active duty as members of a branch of the armed forces of the United States during World War II and were

[1] The factual and legal references supporting statements made in this Summary will be found cited in the detailed Argument.

separated therefrom under honorable conditions. If they are "ex-servicemen" within the meaning of Section 2 of the Veterans' Preference Act of 1944, they are entitled to the "preference ratings" they seek.

A "serviceman" by the recognized common usage of the term is "one who has performed military service". Respondents performed such service as temporary members of the Coast Guard Reserve, a military organization declared by statute a component part of the armed forces of the United States. They took the customary military oath and enrolled for the duration of the war. They were subject to call at any time for unlimited periods of active duty. They wore the regular uniform of the Coast Guard suitable for their rank while on active duty. They were subject to military discipline. They possessed all the powers of regular members of the Coast Guard of the same rank while on duty, including the power of command over subordinates. They were, in the language of the Commandant of the Coast Guard, "military in every respect".

In interpreting Section 2 of the Veterans' Preference Act it is not necessary to resolve any ambiguity or inconsistency. The statute is clear on its face if the words, including the word "ex-servicemen", are given their ordinary and normal meaning. Established principles of statutory construction under these circumstances make recourse to the legislative history and other secondary sources unwarranted. Applying the words of the section in their commonly accepted sense leads neither to an absurd result nor to a result at variance with the policy underlying the statute as a whole.

Even if the legislative history is examined, however, it reveals no basis for attributing a special or technical meaning to the term "ex-serviceman". The Veterans'

Preference Act, while motivated in part by a desire to assist ex-servicemen dislocated from their civilian jobs, was drawn to have general application, and as a matter of policy was not so confined.

Petitioners' exhaustive search of the legislative history has not disclosed any valid test for determining a practical application of the term "serviceman" other than its ordinary and accepted usage. Indeed, petitioners offer no such test supported by the legislative history, but merely insist that respondents could not have been comprehended within its terms. Petitioners themselves, by their own regulations, award preference to certain temporary members of the Reserve even though these members, like respondents, were subject to the Selective Service Act and could not be transferred to other points of duty without their consent. These criteria are, accordingly, not controlling. Petitioners also contend that respondents were not dislocated from their civilian jobs. Yet many other ex-servicemen who were not so dislocated are granted preference, and neither the Act by its terms nor the legislative history affords any basis for the degree or type of dislocation which should control, nor indeed for the fact of dislocation in any sense whatsoever. Petitioners assert, contrary to fact, that temporary Reservists were not subject to combat, but are in any event obliged to admit that this is not one of the criteria, for many categories of ex-servicemen who did not experience combat, and who indeed were not eligible for combat, are granted the preference.

In the last analysis, petitioners seek to have this Court write at least four additional words into the statute so that it will, in effect, apply to "those ex-servicemen and women who have served *full time with pay* on active duty". Such a construction would be a

legislative, not a judicial, act, for the statute is not so qualified, and even if the Court looks behind its clear and unambiguous terms to the legislative history, it will find nothing in the Congressional reports or debates which suggests that only full time paid duty was contemplated. Where Congress has meant to grant benefits to veterans only upon their having performed a specific period of duty, it has so stated. The consideration of payment cannot be determinative of status, particularly in a statute which is not concerned with matters of compensation or monetary benefits.

Any doubt as to the Congressional intent to include temporary members of the Coast Guard Reserve within the term "serviceman" is resolved by the fact that this status is recognized in numerous court decisions and administrative precedents. The position of respondents is further strengthened when the Veterans' Preference Act is read as a whole and it is recognized, particularly in the light of Section 18, that temporary members of the Coast Guard Reserve under petitioners' own regulations were entitled to preference at the time the statute was enacted.

Respondents are entitled to the preference they seek.

ARGUMENT

FORMER TEMPORARY MEMBERS OF THE COAST GUARD RESERVE ARE "EX-SERVICEMEN" WITHIN THE MEANING OF THE VETERANS' PREFERENCE ACT OF 1944

ONE WHO HAS PERFORMED MILITARY SERVICE IS GENERALLY RECOGNIZED TO BE A SERVICEMAN WITHIN THE ORDINARY AND COMMONLY ACCEPTED MEANING OF THE TERM

A "serviceman"[2] is commonly defined as "one who

[2] The term "veteran", which is used interchangeably with "serviceman" in the Act has an identical meaning, being defined as "one who has seen service" (Webster International Dictionary, 2nd Ed., 1942).

has performed military service" (Webster International Dictionary, 2nd Ed., 1942).

The term is given no special statutory meaning for purposes of the Veterans' Preference Act of 1944. If the literal and obvious meaning of "ex-serviceman" is applied in interpreting the Act, no inconsistency or confusion is created. Accepting the common meaning of the term, there can be no question but that respondents are entitled to preference within the meaning of the Act, since they served subject to military orders in a branch of the armed forces and thus performed military service.

Petitioners urge that the word "ex-serviceman" is so ambiguous that it is necessary to look behind the express words of the statute and to read a special meaning into the words on the basis of the sketchy legislative history and the wording which Congress has used in *other* statutes dealing with "veterans". We fail to see the ambiguity which prompts this inquiry or the need to give the term a special meaning contrary to customary usage.

THE ACCEPTED MEANING OF THE TERM "SERVICEMAN" FINDS SUPPORT IN DECISIONS RELATING TO MILITARY SERVICE

The view that the term "serviceman" is used in its customary and ordinary meaning is fortified by the ample precedent found in decisions of this Court and lower courts dealing with comparable problems.

In *United States* v. *Tyler*, 105 U. S. 244, 246, (1882) this Court, in considering the question whether an army officer retired from active service was still in the military service of the United States, said:

> "It is impossible to hold that men who are by statute declared to be a part of the army, who may wear its uniform, whose names shall be borne upon

its register, who may be assigned by their superior officers to specified duties by detail as other officers are, who are subject to the rules and articles of war, and may be tried, not by a jury, as other citizens are, but by a military court-martial, for any breach of those rules, and who may finally be dismissed on such trial from the service in disgrace, are still *not* in the military service.

"If Congress chose to provide for their qualified relief from active duty, and for a diminished compensation, it did not discharge them from their other obligations as part of the Army of the United States . . ."

The cases have been explicit in defining the tests which determine when military service has commenced. In *United States* v. *Morton*, 112 U. S. 1 (1884), this Court held that the "service" of an Army officer began when he executed the sworn agreement to serve and took the oath of office as a candidate at West Point. Similarly, in *Billings* v. *Truesdell*, 321 U. S. 542 (1944), it was held that a registrant had been inducted into service when he performed the specified ceremony by taking the short oath administered under War Department procedures.

In none of these situations where the Court has been called upon to consider the indicia of service has it placed emphasis upon the length or full time character of the service, the basis of compensation, or the serviceman's ability to retain his civilian occupation. The execution of the oath, the right to wear the uniform, the responsibility to orders of superior officers, the application of the rules and articles of war, all present in the case of respondents, have been the criteria which this Court has chosen as a basis for determining whether a man is in service. The distinction between those in and

those not in service, which petitioners urge, based upon part time voluntary or unpaid service, has never been drawn. *Wood* v. *United States*, 107 U. S. 414 (1882); *Badeau* v. *United States*, 130 U. S. 439 (1889); *Kahn* v. *Anderson*, 255 U. S. 1 (1920); *Hurley* v. *Crawley*, 50 F. (2d) 1010 (1931); *United States* v. *McIntyre*, 4 F. (2d) 823 (1925); *Morgenthau* v. *Barrett*, 108 F. (2d) 481 (1939); *Ex Parte Kruk*, 62 F. Supp. 901 (1945); and *Jorgenson* v. *Metropolitan Life Insurance Company*, 24 N. J. Misc. 22 (1945).

DECISIONS SPECIFICALLY INVOLVING THE STATUS OF TEMPORARY MEMBERS OF THE COAST GUARD RESERVE HOLD THAT THEY PERFORMED MILITARY SERVICE

The military status of the Reserve has been frequently recognized by the courts, which have uniformly held that the temporary Reservists were serving as members of the armed forces and entitled to the resulting benefits and obligations. These decisions are thus wholly consistent with the specific statutory provisions creating the Reserve as a military organization and recognizing it as a component part of the armed forces of the United States. In *Petition of Delgado*, 57 F. Supp. 460 (1944), a Philippine national, honorably disenrolled as a temporary member of the Reserve, applied for American citizenship under Section 701 of the Nationality Act of 1940, and the Court was required to decide whether the applicant had "served honorably in the military or naval forces of the United States" within the meaning of the statute. This question was answered in the affirmative by the District Judge, who stated that "The statutes make it abundantly clear that temporary members of the Coast Guard Reserve are members of the naval forces of the United States." (p. 461)

Similarly, in *Brown* v. *Cain*, 56 F. Supp. 56 (1944), the Court sustained relator's claim, raised by writ of *habeas corpus*, that he was immune from state prosecution for killing a man while on guard duty as a temporary member of the Coast Guard Reserve. The Court recognized the claim and held that relator "was a member of the armed forces of the United States." (p. 58)

To the same effect is a recent decision of the New York State Supreme Court in *Rubin* v. *Conway*, 74 N. Y. S. (2d) 166 (1947), construing the State Constitution, which provides that preference in appointment and promotion should be given any citizen of the State following "honorable discharge" as "a member of the armed forces of the United States who served therein in time of war". The Court held that a temporary member of the Coast Guard Reserve was "a member of the armed forces of the United States who served therein in time of war" and thus entitled to preference in employment.

Finally, it is not without significance that the Judge Advocate of the Navy held on July 24, 1943 that temporary members of the Coast Guard Reserve are "members of the armed forces" and considered "to be in military service" (Court Martial Orders for 1943, Part 3, page 40). Temporary members of the Reserve are credited with time spent on active duty in determining eligibility for military longevity pay (Dec. Comp. Gen. B-33903, Sept. 4, 1943). Also, they are entitled to receive military awards and decorations, *e.g.*, World War II Victory Medal and American Campaign Medal (Alcoast 148-45).

THE TERM "SERVICEMAN" IS FREE OF AMBIGUITY AND THE MEANING OF THE STATUTE IS CLEAR WITHOUT REFERENCE TO LEGISLATIVE HISTORY

There is no need for this Court to explore the legislative history of the Veterans' Preference Act, for the statute is clear on its face. Petitioners insist that a choice of construction is presented, but constant reiteration of this position does not demonstrate that in fact there is such a choice. It gains petitioners nothing merely to state that the term "ex-serviceman" has a widespread connotation at variance with part time duty. No authority has been or can be cited in support of this assertion.

The term "ex-serviceman", as has been indicated, has a normal, spontaneous and well recognized meaning which should be applied. It is a term used in plain everyday language to mean "one who has performed military service" and nothing more.[3] This Court noted in a recent case the desirability in construing a statute ". . . to stick close to the text and not import argumentative qualifications from broad, unexpressed claims of policy" (*Utah Junk Co.* v. *Porter,* 328 U. S. 39, at 44 (1946)). This view has been frequently enunciated. Thus the Court elsewhere stated:

> ". . . it would be obviously illogical to convert words of common speech used in a statute into words of

[3] Edgerton, J., in his dissent, argues (R. 70) that the term "ex-serviceman" should be given special meaning because, in his opinion, it is unlikely that Congress would have used this "awkward phrase" as a mere synonym for the simple words "persons". Should such semantic shading require explanation, it is found in the body of the section itself, where Congress was careful to make the statute applicable to both "ex-servicemen and women", thus eliminating any doubts latent in the neuter term "persons" as to the sex of preference eligibles.

> scientific terminology when neither the latter nor the science for whose purposes they were coined was within the contemplation of the framers of the statute or of the people for whom it was framed. The words of the statute are to be interpreted in accordance with the understanding of the common man from whose vocabulary they were taken." (*United States* v. *Thind*, 261 U. S. 204, 209 (1923))

And again in *Helvering* v. *City Bank Company*, 296 U. S. 85 (1935), at 89, the Court said:

> "We are not at liberty to construe language so plain as to need no construction or to refer to committee reports where there can be no doubt of the meaning of the word used."

See, also, *Crane* v. *Commissioner of Internal Revenue*, 331 U. S. 1 (1947); *Osaka Shosen Kaisha Line* v. *United States*, 300 U. S. 98 (1936); *United States* v. *Hill*, 248 U. S. 420, 424 (1918); and *Adams Express Co.* v. *Kentucky*, 238 U. S. 190 (1914).

As was recognized in *United States* v. *American Trucking Association*, 310 U. S. 534, 543 (1939), the rule of construction embodied in the above cases is open to qualification only if the plain meaning of the statute creates an absurd result or leads to a conclusion at variance with the policy of the legislation taken as a whole. Neither of these conditions arises here.

We do not deny the Government's contention that a primary purpose of the Act was to assist ex-servicemen dislocated from their civilian jobs and we admit that these particular respondents were not so dislocated by reason of their temporary service in the Coast Guard Reserve. It is one thing to recognize such a purpose but quite another to say, as petitioners do, that the Act was limited solely to the accomplishment of this pri-

mary purpose. In plain point of fact, it was not so limited.

As the provisions of the Act itself demonstrate, it had a broad purpose and intent which was most clearly stated by Congressman Starnes, co-author of the Act, in his testimony before the Senate Civil Service Committee when he said:

> "It is a reward to a man for patriotic duties well performed; it encourages our young men and women to serve their country in an hour of need; and it makes them feel, when they have given their all or offered to give their all in defense of this country and its institutions, that a grateful country will recognize their sacrifice and service when peace comes by giving them preference for service in various capacities with their government." (Hearings S. 1762, 78th Cong., 2nd Sess. 1944, p. 8)

Thus men sent home from induction centers and training camps after a few days or weeks of service receive the preference as do men commissioned or enlisted who served with pay for one or more days to accomplish a specific task of limited duration. The fact that these men were able readily to resume their civilian employment in no way affected their right for all time to claim the benefits of the statute. There is no requirement in the statute of a minimum active duty period such as is found in companion legislation enacted at approximately the same time (Servicemen's Readjustment Act of 1944, 58 Stat. 284, 38 U. S. C. A. 693). Nor does the Act follow the dislocation theme when it grants married or unmarried widows of deceased servicemen a preference even though they continue their normal civilian employment during the war. Yet petitioners would have this Court believe that the widows of temporary members of the Coast Guard Reserve killed in

line of duty were intended to be excluded from the benefits of the Act since their deceased husbands were not separated, except by death or disability, from their civilian employment.

The dislocation test which petitioners urge is simply not found in the statute. Certainly there is no basis given for determining the degree of dislocation which should be recognized or the type of dislocation which should be recognized. Men and women serving during the war in a branch of the armed forces and separated under honorable conditions, regardless of the effect of their service upon their civilian employment, were all recognized as deserving and included under a broad statute of general application. Because respondents were subject to call at any time for unlimited active duty for the duration of the war, they could have been dislocated from their civilian jobs. The fact that they were not so called and were not so dislocated is immaterial. Obviously thousands of full time servicemen were not in fact dislocated from their civilian jobs, yet they receive preference.[4]

Nor is the result absurd. Not only did temporary members of the Coast Guard Reserve have preference at the time the statute was passed, but the Civil Service Commission initially interpreted the statute as granting such preference (R. 18-19, 24-25). And Section 18 of the Veterans' Preference Act is a clear indication of the contemporary understanding of the meaning of the term "serviceman" and of the Congressional purpose

[4] Included in this group are ex-servicemen who were able to return to their civilian jobs following the war and ex-servicemen in technical and other capacities who were placed in uniform and continued without interruption the performance of their civilian peacetime duties.

to continue the preferences for temporary Reservists authorized by existing regulations.[5] Moreover, there is nothing unreasonable in the conclusion that men who took the military oath and enrolled for the duration, who were subject to call at any time for duty of unlimited duration, who served under arms on active duty in the Coast Guard, who possessed all the powers of regularly enrolled members of the Coast Guard of the same rank while on duty, including the power of command over subordinates, who were sometimes exposed to combat, some of whom were killed in line of duty, who themselves had the authority to kill and yet be immune to civil processes, and who were liable to military discipline and entitled to wear the uniform and insignia of the United States Coast Guard are clearly servicemen within the meaning of the statute.

REVIEW OF THE LEGISLATIVE HISTORY IS COMPLETELY UNPRODUCTIVE

Petitioners' efforts to establish from the legislative history that the term "ex-servicemen" has some special

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[5] The Veterans' Preference Act became effective June 27, 1944. Prior to its enactment, the United States Civil Service Commission issued Circular Letter No. 4145 instructing Regional Directors and Division Chiefs to grant preference to temporary Coast Guard Reservists whether serving full time, part time or intermittently, and either with or without pay if honorably separated from active duty (R. 18-19). This rule or regulation was in force and effect at the time the Veterans' Preference Act became law. Temporary members of the Coast Guard Reserve serving in the same capacity as respondents were entitled to preference. Indeed, immediately following the effective date of the Act, the Civil Service Commission reaffirmed its ruling (R. 4, 10, 49, 56). Respondents thereafter were enrolled as temporary Coast Guard Reservists, and it was not until later that the Commission revoked its prior ruling (R. 24-25), thus precipitating this litigation.

meaning when used in the Veterans' Preference Act has, moreover, not been successful. Its elaborate search of the legislative history has established nothing which justifies giving this term a meaning contrary to ordinary usage. The most that petitioners can squeeze from the debates and committee reports is its broad argument as to the principal, but not exclusive, statutory purpose which has been considered above.

Petitioners proceed to the legislative history on the theory that the statutory provision here in issue, "like most other statutes in the field of military and veteran legislation, can properly be read only in the light of its policy, purpose, context and history." There is ample evidence that veteran statutes enacted at different times, for different purposes and under different conditions all have different application. Petitioners, however, offer no formula by which this varied legislation can be interpreted consistent with a harmonious series of definitions and objectives. In fact, this legislation is not consistent and was never intended to be. There is no basis in law or fact for the unique theory petitioners now assert.

It requires little analysis of petitioners' argument to demonstrate that essentially what it is seeking is a revision of the legislation by court action, a wholly improper objective. If the suggestion of petitioners is adopted, this Court must write at least four additional words into the statute so that it reads: "those ex-servicemen and women who have served *full time with pay* on active duty," etc. To write these words into the statute would be a legislative, not a judicial, act, for there is not a single suggestion in the body of the statute itself, or in the legislative history, that the compensation of the ex-serviceman or the full or part time nature

of his duties was ever given any consideration. (90 Cong. Rec. 3505; 1944, 78th Cong. 2nd Sess.). Indeed, quite the contrary, for the legislative history shows that there was no effort made to define the term "veteran" with any precision, and this is a term which petitioners claim to be synonymous with "ex-serviceman".

Petitioners, moreover, do not find in the legislative history any indication that a specific meaning was intended by the term "serviceman" as used in the Veterans' Preference Act other than its common usage, and do not offer to this Court a definition of the term which it can apply uniformly to the many situations which may arise in the interpretation of the Act. It is stated categorically that these respondents could not have been intended to be included, but the Court is left without guidance as to where any line of demarcation between those to be included and those to be excluded within the broad terms of the statute shall be drawn.

Throughout their brief petitioners make constant reference to the fact that respondents continued to be subject to the Selective Service Act while serving as temporary members of the Coast Guard Reserve, and to the fact that as members of this Reserve respondents could not be assigned to duty away from home without their consent. It is repeatedly suggested that these two circumstances demonstrate that respondents' service was not of the type which Congress intended to comprehend within the term "serviceman". There is no specific legislative history to support this position. Moreover, petitioners cannot be heard to advance the argument for it is contradicted by their own regulations. The regulations of the United States Civil Service Commission specifically provide that temporary members of the United States Coast Guard Reserve serving full time with pay are entitled to veterans' preference (R. 4).

Yet such members of the Reserve, like respondents, continued to be subject to the Selective Service Act and also could not be assigned for duty away from home without their consent. Surely such grant of preference is wholly inconsistent with petitioners' position here. The Civil Service Commission's own regulations must be taken as concessions that neither immunity from draft nor the need of acquiescence in orders transferring a serviceman to another point of duty are indicia which control the determination of "ex-serviceman" status.

Petitioners also make the argument that these temporary members of the Coast Guard Reserve are not eligible to receive preference since it has been held administratively that they are not eligible for National Service Life Insurance, pensions, medical and hospital benefits, etc. This position is in direct conflict with petitioners' own regulations. The Administrator of Veterans' Affairs has ruled that no temporary member of the Reserve, regardless of pay status or duty status, is entitled to these benefits (R. 37). Yet petitioners' own regulations provide that the temporary members of the Reserve who served full time with pay are entitled to veterans' preference (R. 4). This is sufficient to demonstrate that eligibility for the benefits in question is not one of the controlling criteria for determining serviceman status.

Respondents are clearly "ex-servicemen" within the meaning of the Act and entitled to preference ratings under the unequivocal statutory direction.

A REPLY TO CERTAIN INACCURACIES AND ARGUMENT PRESENTED IN PETITIONERS' BRIEF.

1. Petitioners, throughout their brief, have sought to minimize the obligations to serve assumed by respondents at time of enrollment. The enrollment and as-

signments which are in the record provide for active duty for a minimum of 12 hours per week (R. 6, 51), not 6 as petitioners state in their brief (p. 29, note 11). Since petitioners served at the order of the Commandant, or his subordinates, the average time served was subject to variance under conditions which respondents did not control. Moreover, this was a minimum period. Competent authorities of the Coast Guard Reserve had power to order longer periods of duty up to full time duty (R. 6, 51). There was not, as petitioners state, any term of the enrollment which assured respondents that they could continue their regular civilian employment (R. 6-8, 51-53). Respondents were always subject to full time duty assignment (R. 6, 51).

2. The suggestion in petitioners' brief that temporary members of the Coast Guard Reserve could be disenrolled merely *at their own request* if their duty assignments conflicted with their civilian work is not supported by the record. No member of the Reserve could control, by resignation or otherwise, the duration of his enrollment. The enrollment and active duty assignment specifically stated "the period of your enrollment shall be for the duration of the war upon the completion of which you will be disenrolled, unless the period of your enrollment is sooner terminated by Coast Guard authority" (R. 6, 51). Obviously under this explicit language only the determination by responsible officers of the Reserve controlled the period of the Reservist's service. All other members of the military forces of the nation served under like terms and conditions (*Re* Navy, see Naval Reserve Act of 1938, 52 Stat. 1175, 34 U. S. C. A. Sec. 853; and Army, see Act of December 13, 1941, 55 Stat. 800, 50 U. S. C. A. § 732).

3. Petitioners argue that the "contemporaneous enactment" of the Servicemen's Readjustment Act of 1944 (58 Stat. 284) demonstrates that Congress, in the Veterans' Preference Act, intended to include under the term "ex-servicemen" only persons serving full time. Quite the contrary is the case, for in this contemporaneous act Congress was careful to state that the benefits would not accrue until "after active service of 90 days or more". Had any such limitation been in the minds of Congress in enacting the preference legislation, why should it not have been equally and explicitly stated? The bills were enacted at the same time and a clear distinction exists, as was intended.

4. Petitioners seek to magnify the significance of a decision in this case affirming the lower court and granting respondents preference. While the record shows that there were but 70,000 temporary members of the Coast Guard Reserve (R. 13, 31), petitioners claim that there were 125,000. Whichever the figure, certain temporary members of the Coast Guard Reserve, under petitioners' own regulations, are admittedly entitled to preference which reduces the group affected by the decision. Many others, of course, have no practical interest in the preference because they are not now and do not hereafter contemplate becoming federal employees. Some of the group affected are not in fact involved because, as the record shows, numerous members of the Reserve were later drafted or enlisted and are entitled to preference by reason of service in other branches of the armed forces (R. 15); and from 50% to 60% of the entire group are veterans of World War I and therefore entitled to preference in any event (Hearings H. R. 1389, 80th Cong., 1st Sess., April 18, 1947, p. 30). In fact, the group materially affected by

this decision is very small and the determination can have no substantial influence upon the operations of the Civil Service Commission in administering veterans' preference.

5. Petitioners point to the fact that, since the institution of this litigation, proceedings in Congress indicate a widespread view that temporary members of the Coast Guard Reserve should not receive veterans' preference. Various bills have been introduced specifically granting the preference or taking it away. These are all in the form of amendments to the existing Act. It is also true that a bill which would remove the preference has been passed in the House of Representatives and has received favorable consideration by the Senate Committee on Civil Service. The bill, however, received consideration on the floor of the Senate and failed of passage when called on the unanimous consent calendar (80th Cong., 1st Sess. 1947, Cong. Rec. Vol. 93, No. 142, July 23, 1947). The very fact that this legislation is deemed necessary by those who seek to have the preference denied demonstrates that the statute as now written, which is the statute which this Court is called upon to construe, grants such preference.

6. Petitioners incorrectly state that the legislative history of the provisions of the Coast Guard Auxiliary and Reserve Act of February 19, 1941, and its amendments, "contains nothing indicating the views of Congress" as to the status of temporary Reservists as veterans or ex-servicemen. The following quotations from the legislative history refute petitioners' contention.

The Coast Guard Reserve, in which respondents served, was created by the Coast Guard Auxiliary and

Reserve Act of 1941, 55 Stat. 12, 14 U. S. C. §260 (Supp. V), and was an integral part of the Coast Guard, bearing the same relation to the regular Coast Guard that the Naval Reserve bears to the regular Navy. In the House Report on the bill (House Report No. 25, 77th Cong., 1st Sess. 1941) it is said at page 5:

> "Section 201 creates and establishes a new Coast Guard Reserve which will be military in character and which is modeled after the Naval Reserve as far as is practicable . . ."

The then Commandant of the Coast Guard, the late Rear Admiral Russell R. Waesche, testified in behalf of the bill (Hearings on H. R. 562, 77th Cong., 1st Sess., January 28, 1941, p. 17):

> ". . . The members who are brought in as temporary reservists, who are also military in every respect, will be brought into the military reserve for duty in a particular locality . . . They will be called to active duty and have military rank and military pay and all of the authority and responsibility of the regular Coast Guard officers, but they will operate only in the particular locality where they are enrolled . . ."

7. Petitioners make much of the fact that temporary members of the Coast Guard Reserve are, by administrative rulings, not now included under the terms of other veteran statutes such as the Servicemen's Readjustment Act and the Mustering-out Payment Act. These acts have different wording and accomplish different purposes. To the extent monetary compensation is involved, they obviously are to be read and interpreted in the light of the fact that these particular temporary Reservists were not compensated. By having agreed to serve without pay at the time of enrollment,

these Reservists clearly waived rights to certain monetary compensation, but this should not militate against them in interpreting the present statute.

Petitioners are forced to concede temporary Reservists are included within the provisions of the Soldiers' Voting Law (Navy Court Martial Orders for 1944, Part 2, p. 255), are eligible for the World War II Victory Medal and for the American Campaign Medal, and are entitled to burial in national military cemeteries. The conflicting applicability of statutes and regulations affecting servicemen adds little to the resolution of the problem of statutory interpretation here presented.

8. Petitioners argue that temporary Reservists may not properly be considered servicemen since, by statute, their compensation in the event of permanent disability is governed by the provisions applicable to civilian rather than military personnel. Apart from the fact that the compensation in both cases is comparable and was made so designedly (R. 36), it should be pointed out that the statutory provision was prompted by the peculiar circumstances under which temporary Reservists were enrolled and was not intended to reflect the different character of service performed. Temporary Reservists were, in the main, recruited from a group who were either exempt from the Selective Service Act or at an age level where it was unlikely that they would be drafted. Since the men and women in this group were of an average age of over 40 years (Hearings H. R. 1389, 80th Cong., 1st Sess., April 18, 1947, p. 24) and enrollment was made without regard for strict medical standards, it was felt that disabilities arising after service might, in part, be the result of service and, in part, be the result of normal causes. For this reason Congress properly felt it more appropriate to provide dis-

ability compensation on the basis specified in the statute, thus avoiding the necessity for effecting retirements for physical disability in the manner afforded other military personnel. (See statement of Admiral Waesche, House Hearings on H. R. 562, 77th Cong., 1st Sess., January 28, 1941, p. 10). These considerations, however, in no way reflect a Congressional attitude as to the nature of the services being performed.

CONCLUSION

Respondents are entitled to preference under the provisions of the Veterans' Preference Act of 1944 and the judgments of the courts below should be affirmed.

Respectfully submitted,

GERHARD A. GESELL,
Attorney for Respondents.

December, 1947.

APPENDIX

1. Sections 2 and 18 of the Veterans' Preference Act, Act of June 27, 1944, c. 287, 58 Stat. 387 (5 U. S. C., Supp. V, 851-869), provide as follows:

> "Sec. 2. In certification for appointment, in appointment, in reinstatement, in reemployment, and in retention in civilian positions in all establishments, agencies, bureaus, administrations, projects, and departments of the Government, permanent or temporary, and in either (a) the classified civil service (b) the unclassified civil service (c) any temporary or emergency establishment, agency, bureau, administration, project, and department created by Acts of Congress or Presidential Executive order; and (d) the civil service of the District of Columbia, preference shall be given to (1) those ex-servicemen and women who have served on active duty in any branch of the armed forces of the United States and have been separated therefrom under honorable conditions and who have established the present existence of a service-connection disability or who are receiving compensation, disability retirement benefits, or pension by reason of public laws administered by the Veterans' Administration, the War Department or the Navy Department; (2) the wives of such service-connected disabled ex-service men as have themselves been unable to qualify for any civil-service appointment; (3) the unmarried widows of deceased ex-servicemen who served on active duty in any branch of the armed forces of the United States during any war, or in any campaign or expedition (for which a campaign badge has been authorized), and who were separated therefrom under honorable conditions; and (4) those ex-servicemen and women who have served on active duty in any branch of the armed forces of the United States, during any war, or in any campaign or expedition (for which a campaign

badge has been authorized), and have been separated therefrom under honorable conditions."

"Sec. 18. All Acts and parts of Acts inconsistent with the provisions hereof are hereby modified to conform herewith, and this Act shall not be construed to take away from any preference eligible any rights heretofore granted to, or possessed by, him under any existing law, Executive order, civil-service rule or regulation, or of any department of the Government or officer thereof."

2. Pertinent portions of the Coast Guard Auxiliary and Reserve Act, Act of February 19, 1941, c. 8, Title II, §§ 301, 302, 303, 304, 305, 306, 55 Stat. 12, as amended (14 U. S. C., Supp. V, 301-306), provide as follow:

"Sec. 301. There is hereby created and established a United States Coast Guard Reserve (hereinafter referred to as the 'Reserve'), the purpose of which is to provide a trained force of officers and enlisted personnel which, added to regular personnel of the Coast Guard, will be adequate to enable that service to perform such extraordinary duties as may be necessitated by emergency conditions.

"Sec. 302. The Reserve, which shall be a component part of the Coast Guard shall be composed of citizens of the United States and of its Territories and possessions, including the Philippine Islands, between the ages of seventeen and sixty-four, who are physically and otherwise qualified for the performance of duty with the Coast Guard, and who, through appointment or enlistment therein, obligate themselves to serve in the Coast Guard in time of war or during any period of national emergency declared by the President to exist.

"Sec. 303. The ranks, grades, and ratings, including cadets, in the Reserve shall be the various ranks, grades, and ratings not above captain, pre-

scribed by law for the Coast Guard: *Provided*, That no officer shall be initially appointed in the Coast Guard Reserve in the grade or rank of captain or commander.

"Sec. 304. The Reserve shall be a military organization administered by the Commandant, under the direction of the Secretary of the Treasury, and the Commandant shall, with the approval of the Secretary of the Treasury and the concurrence of the Secretary of the Navy, prescribe such regulations as may be necessary to effectuate the purposes of this subchapter.

"Sec. 305. Any member of the Reserve may be ordered to active duty by the Commandant in time of war or during any period of national emergency declared by the President to exist and be required to perform active duty throughout the war or until the President declares that such national emergency no longer exists; but in time of peace, except for disciplinary purposes as provided in section 309 hereof, no such member shall be ordered to or continue on active duty without his consent: *Provided*, That the Commandant may release any member from active duty either in time of war or in time of peace. Members of the Reserve while engaged on active duty shall be vested with the same power, authority, rights, and privileges as members of the regular Coast Guard of similar ranks, grades, or ratings. In time of peace members of the Coast Guard Reserve may, with their consent, be given additional training or other duty either with or without pay, as may be authorized by the Secretary of the Treasury. When authorized training or other duty without pay is performed by members of the Reserve they may, in the discretion of the Secretary of the Treasury, be furnished with transportation to and from such duty, with subsistence, and transfers en route and, during the performance of such duty, be furnished subsistence

in kind or commutation thereof at a rate to be fixed from time to time by the Secretary of the Treasury.

"Sec. 306. Commissioned officers, chief warrant officers, warrant officers, and enlisted personnel of the Reserve when engaged on active duty, on active duty while undergoing training, on training duty with pay, or when engaged in authorized travel to or from such duty, shall receive the same pay and allowances as are received by commissioned officers, chief warrant officers, warrant officers, and enlisted personnel of the Naval Reserve of the same rank, grade, rating, and length of service; pay and allowances of cadets of the Reserve shall under the same conditions, for the same purposes, and in the same manner, be assimilated to the pay and allowances of midshipmen of the Naval Reserve. In determining length of service for the purposes of this section, there shall be included (a) all periods of active duty under this chapter, except active duty while undergoing training, and (b) all other service for which credit is given by law to members of the regular Coast Guard. When members of the Reserve perform active duty or active duty while undergoing training for a period of less than thirty days, such duty performed on the thirty-first day of any month shall be paid for at the same rate as for other days: *Provided,* That members of the Reserve while engaged on active duty which involves the actual flying in aircraft in accordance with regulations prescribed by the Commandant shall receive the same increase of pay of their ranks, grades, or ratings as may be received by members of the regular Coast Guard in similar ranks, grades, or ratings, for the performance of similar duty."

pp. 8 + 10.

SUPREME COURT OF THE UNITED STATES

Nos. 130–131.—October Term, 1947.

Harry B. Mitchell, Frances Perkins, Arthur S. Flemming, Individually and as Members of the Civil Service Commission, Petitioners, 130 *v.* Jack W. Cohen. Harry B. Mitchell, Frances Perkins, Arthur S. Flemming, Individually and as Members of the Civil Service Commission, Petitioners, 131 *v.* Harry W. Hubickey.	On Writs of certiorari to the United States Court of Appeals for the District of Columbia.

[March 8, 1948.]

Mr. Justice Murphy delivered the opinion of the Court.

The problem here is whether temporary members of the Volunteer Port Security Force of the Coast Guard Reserve are entitled to veterans' preference in federal employment by virtue of the Veterans' Preference Act of 1944.[1]

Pursuant to § 207 of the Coast Guard Auxiliary and Reserve Act of 1941,[2] approximately 70,000 persons were enrolled as temporary members of the Coast Guard Reserve. The Reserve was a military organization established as a component part of the Coast Guard "to enable that service to perform such extraordinary duties as may be necessitated by emergency conditions."[3] The Coast

[1] 58 Stat. 387, 5 U. S. C. § 851.

[2] 55 Stat. 9, 12, as amended, 14 U. S. C., Supp. V, § 307.

[3] § 201 of the Coast Guard Auxiliary and Reserve Act of 1941, 55 Stat. 9, 11, as amended, 14 U. S. C., Supp. V, § 301.

Guard, in turn, was created as a military service and constitutes "a branch of the land and naval forces of the United States."[4] On November 1, 1941, the President directed that the Coast Guard operate as part of the Navy subject to the orders of the Secretary of the Navy.[5]

Of the various classifications of temporary members of the Coast Guard Reserve,[6] the largest was known as the Volunteer Port Security Force. Service therein was purely voluntary and was devoted to such activities as the patrol and guarding of harbors, waterfronts, docks, bridges, ships and industrial shore establishments. The members of this force took the oath of allegiance required of the regular members of the Coast Guard. They were enrolled "for the duration of the war upon the completion of which you will be disenrolled unless the period of your enrollment is sooner terminated by Coast Guard authority."[7] In actual practice, however, the members were usually permitted to leave the Force at any time by making a request to the commanding officer of the unit to which they were assigned. They were given a "Certificate of Disenrollment" upon severance from the Force, honorable discharges and mustering-out pay not being provided.

Members of the Volunteer Port Security Force were obligated to be on active duty "only as directed by com-

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[4] 55 Stat. 585; 14 U. S. C. § 1.

[5] Executive Order No. 8929, 6 Fed. Reg. 5581.

[6] The other classifications were: (1) Full-time active duty with military pay and allowances; (2) Pilots without pay and allowances other than for uniforms, but paid by their own companies; (3) Officers of Great Lakes vessels without pay and allowances other than for uniforms, but paid by their own companies; (4) Coast Guard police without pay and allowances; (5) Civil Service employees of the Coast Guard enrolled for full-time active duty without pay other than compensation for their civilian positions.

[7] From the form entitled "Temporary Member of Coast Guard Reserve—Enrollment and Active Duty Assignment."

petent authority for a minimum of 12 hours per week."[8] It does not appear that their active duty exceeded that amount to any substantial degree. Because of the small number of hours of service, most members were able to continue their regular civilian employment with little or no interference. They could not be transferred from the cities in which they lived without their consent. Efforts were made by the Coast Guard to assign the 12-hour weekly duty periods to fit the convenience of the members. And many of them were disenrolled at their own request upon representations that their duty assignments conflicted with their civilian employment. They could also be excused from duty if they found it temporarily inconvenient.

These members performed their duties without pay. In most cases, however, they received an allowance for uniforms; and in some instances they received food or subsistence allowance while on active duty. Military status attached to them only during periods when they were actually engaged on active duty or en route to and from such duty. While on active duty they wore their uniforms, were subject to the usual Coast Guard discipline and were vested with the same authority as members of the regular Coast Guard of similar rank.

At all times the members of the Volunteer Port Security Force remained subject to the Selective Training and Service Act of 1940. They were required to register and were liable for induction into the regular armed forces. In fact, many of them did enlist or were drafted into those forces, thereby necessitating their disenrollment as temporary members of the Coast Guard Reserve. If illness or disease occurred while on duty, they were accorded the same hospital treatment as members of the regular Coast

[8] *Ibid.* It also appears from this form that those mentioned in classifications (2) and (5) in footnote 6, *supra*, were subject to call at all times. Apparently the other classifications, including the Volunteer Port Security Force, were not subject to such a call.

Guard. But if they were injured or killed in the line of duty, they were entitled only to the benefits prescribed by law for civilian employees of the United States. Moreover they were ineligible for the benefits of National Service Life Insurance.

Respondent Cohen enrolled on April 13, 1944, as a member of the Volunteer Port Security Force and was assigned to duty with the Captain of the Port, Washington, D. C. He performed his part-time duties without compensation and without interruption to his regular employment as a civilian economist in the War Department. He was disenrolled on September 5, 1945, having served on active duty on 58 days for a total service of 398 hours. Respondent Hubickey was enrolled in the Force on October 18, 1944, and was assigned to duty with the Captain of the Port, Philadelphia, Pa. He too performed his part-time duties without compensation and without interference with his regular work as a civilian naval architect in the Navy Department. On September 30, 1945, he was disenrolled, having served on active duty on 32 days for a total service of 250 hours.

On April 4, 1944, before the passage of the Veterans' Preference Act, the Civil Service Commission had ruled that the duties performed by those enrolled in the Volunteer Port Security Force entitled them to veterans' preference in federal employment under the then existing preference laws.* But on November 4, 1944, after the

*Circular Letter No. 4145 to Regional Directors and Division Chiefs of the Commission. This provided that active duty performed by temporary members of the Coast Guard Reserve, whether full-time, part-time, or intermittently, either with or without pay, including Government employees enrolled without pay other than the compensation of their civilian positions, constituted active duty as distinguished from training duty and entitled the member performing such duty to preference benefits under the then existing preference laws.

enactment of the statute in question and pursuant to a recommendation of the Acting Secretary of the Navy, the Commission changed this ruling and decided that such duties did not entitle one to veterans' preference under the terms of the statute.[10]

The two respondents were denied veterans' preference in their government employment in accordance with the Commission's second ruling. Due to general reductions in force, respondent Cohen was discharged from the War Department and respondent Hubickey was notified that he would be discharged from the Navy Department. They then brought these actions to compel the members of the Commission to classify them as preference eligibles; they also asked the court to adjudge and declare them entitled to the status of preference eligibles under the provisions of the Veterans' Preference Act. The District Court granted summary judgments in their favor. 69 F. Supp. 54. The Court of Appeals affirmed, one justice dissenting. 160 F. 2d 915. We brought the cases here on certiorari, the problem raised being one of importance in the administration of the Veterans' Preference Act.

The pertinent portion of the Veterans' Preference Act is to be found near the end of § 2. That establishes preference in government employment for "those ex-servicemen and women who have served on active duty in any branch of the armed forces of the United States, during any war, . . . and have been separated therefrom under honorable conditions."

Respondents claim that their service with the Volunteer Port Security Force brings them squarely within this

[10] Departmental Circular No. 508 to Heads of Departments and Independent Establishments. This modified the earlier ruling and provided that only those temporary Coast Guard Reservists performing full-time duty with pay and allowances at shore stations or aboard Coast Guard vessels were entitled to preference under the Veterans' Preference Act of 1944.

statutory provision, hence entitling them to veterans' preference. It is undisputed, of course, that they did serve part-time on active duty in a branch of the armed forces of the United States during World War II and that they were separated therefrom under honorable conditions. The crucial question is whether they thereby are "ex-servicemen" within the meaning of this particular statute. On that score, respondents urge that this term must be given its ordinary and literal meaning so as to refer to all those who performed military service.[11] The length or continuity of active duty and the presence or absence of compensation become immaterial from respondents' point of view; the mere performance of some type of military service is thought to be sufficient. Since respondents concededly did perform military service while on intermittent active duty with the Volunteer Port Security Force, the conclusion is reached that they are "ex-servicemen" within the contemplation of this statute. Resort to the legislative history and other secondary sources is said to be unwarranted, so clear and obvious is the meaning of that term.

In our opinion, however, the term "ex-servicemen" has no single, precise definition which permits us to read and apply that term without help from the context in which it appears and the purpose for which it was inserted in the statute. Ex-servicemen are indeed those who have performed military service. And they may include those who have served on active duty only part-time and without compensation. But this designation may also be confined to a more definite and narrow class of individuals who performed military service, to those whose full time and efforts were at the disposal of military authorities and whose compensation included military pay and allowances. Such ex-servicemen are those who completely dis-

[11] Respondents point out that the word "serviceman" is defined as "one who has performed military service." Webster's New International Dictionary, 2d ed. (1942).

associated themselves from their civilian status and their civilian employment during the period of their military service, suffering in many cases financial hardship and separation from home and family. They formed the great bulk of the regular armed forces during World War II. In the popular mind, they were typified by the full-fledged soldier, sailor, marine or coast guardsman. Our problem, of course, is whether Congress used the term "ex-servicemen" in the broad or narrow sense when it enacted the Veterans' Preference Act. And the answer to that problem is to be determined by an examination of the statutory scheme rather than by reliance upon dictionary definitions.

The Veterans' Preference Act was enacted in 1944 to aid in the readjustment and rehabilitation of World War II veterans. It was felt that the problems of these returning veterans were particularly acute and merited special consideration. Their normal employment and mode of life had been seriously disrupted by their service in the armed forces and it was thought that they could not be expected to resume their regular activities without reemployment and rehabilitation aids. The Federal Government, in its capacity as an employer, determined to take the lead in such a program.[12] The Veterans' Pref-

[12] "I believe that the Federal Government, functioning in its capacity as an employer, should take the lead in assuring those who are in the armed services that when they return special consideration will be given to them in their efforts to obtain employment. It is absolutely impossible to take millions of our young men out of their normal pursuits for the purpose of fighting to preserve the Nation, and then expect them to resume their normal activities without having any special consideration shown them.

"The problems of readjustment will be difficult for all of us. They will be particularly difficult for those who have spent months and even years at the battle fronts all over the world. Surely a grateful nation will want to express its gratitude in deeds as well as in words."

Letter from the President to Rep. Ramspeck, quoted in H. R. Rep. No. 1289, 78th Cong., 2d Sess., p. 5.

erence Act was accordingly adopted, creating special preferance and protection for returning veterans at every stage of federal employment.

Throughout the legislative reports and debates leading to the birth of this statute is evident a consistent desire to help only those who had sacrificed their normal pursuits and surroundings to aid in the struggle to which this nation had dedicated itself.[13] It was the veterans or ex-servicemen who had been completely divorced from their civilian employment by reason of their full-time service with the armed forces who were the objects of Congressional solicitude. Reemployment and rehabilitation were considered to be necessary only as to ~~ex-servicemen whose regular employment had been disrupted and whose regular life had been uprooted~~.

There is nothing to indicate that the legislative mind in this instance was directed toward granting special benefits or rewards to those who performed military service without interference with their normal employment and mode of life. As to them, assistance in reemployment and rehabilitation was thought unnecessary. Their civilian employment status remained unchanged by reason of their military service. And since their civilian life was substantially unaltered, there was no problem of aiding their readjustment back to such a life. Indeed, to have given them preference rights solely because of their

[13] H. R. Rep. No. 1289, 78th Cong., 2d Sess.; S. Rep. No. 907, 78th Cong., 2d Sess.; 90 Cong. Rec. 3501–3507. The House report stated (p. 3): "Private employers and corporations, as well as State, county, and municipal governments, have been urged through the selective-service law and otherwise to afford reemployment to veterans when they leave the armed forces. Your committee feels that the Federal Government should set the pace, and that this proposal is an essential part of the reemployment and rehabilitation program.". The Senate report stated (p. 1): "The committee believes that in view of the fact that members of the armed forces rapidly are being returned to civilian life, the bill should be enacted without delay."

part-time military service would have been inconsistent with the professed aims of the statutory framers. Such preference would have diluted the benefits conferred on those ex-servicemen who had made full-scale sacrifices; and it would have been inequitable to the many civilians who also had participated voluntarily in essential war and defense activities but who had not been directly connected with a branch of the armed forces.

It is true that § 2 of the Act establishes preference eligibility for the unmarried widows of deceased ex-servicemen despite the fact that these widows may have continued their normal civilian employment during the war. But the preference rights thereby granted are derivative in nature. They are conferred on the widows because of the dislocation and severence from civil life which their deceased husbands suffered while performing full-time military duties and in partial substitution for the loss in family earning power occasioned by their husbands' deaths. Congress felt that this was one way of expressing the moral obligation and the debt of gratitude which this nation was thought to owe these widows. Such a provision certainly affords no basis for widening the concept of "ex-servicemen" beyond that which we have indicated. The widows of ex-servicemen are in a special category which cannot be compared, in terms of sacrifice or need for reemployment and rehabilitation, with any group of individuals who performed part-time military duties.[14]

In the light of the very clear purpose which Congress had in mind in adopting the Veterans' Preference Act,

[14] The same observations apply to the provision in § 2 giving veterans' preference to the wives of ex-servicemen who have a service-connected disability and who themselves have been unable to qualify for any civil-service appointment. See also Public Law 396, 80th Cong., 2d Sess., approved Jan. 19, 1948, extending veterans' preference benefits to the widowed mothers of deceased or permanently and totally disabled ex-servicemen. H. R. Rep. No. 697, 80th Cong., 1st Sess.; S. Rep. No. 480, 80th Cong., 1st Sess.

we are constrained to define the term "ex-servicemen," for the purposes of this particular statute, as relating only to those who performed military service on full-time active duty with military pay and allowances, thereby dislocating the fabric of their normal economic and social life.[15] It thus becomes obvious that respondents' service with the Volunteer Port Security Force of the Coast Guard Reserve cannot qualify them as "ex-servicemen" entitled to veterans' preference under this enactment. They continued their normal civilian employment with the War Department and the Navy Department during the war, employment which suffered as little as possible from their military service; they served on active duty for only relatively short periods each week and could be disenrolled at

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[15] The view we take of this matter coincides with that expressed by the supporters of H. R. 1389, 80th Cong., 1st Sess. That bill proposed to amend § 2 of the Veterans' Preference Act by providing that "'active duty in any branch of the armed forces of the United States' shall mean active full-time duty with military pay and allowances in any branch of the armed forces during any campaign or expedition (for which a campaign badge has been authorized)."

Hearings were held before the House Committee on Post Office and Civil Service. The bill was unanimously reported out by the committee, H. R. Rep. No. 465, 80th Cong., 1st Sess., and was adopted by voice vote by the House of Representatives; 93 Cong. Rec. 7315–7318. A unanimous Senate Committee on Civil Service also reported the bill favorably, S. Rep. No. 396, 80th Cong., 1st Sess., but the Senate adjourned without considering the bill.

The proponents of the bill and the two committees considered it as a clarification of the original Congressional intent as to the meaning of "ex-servicemen." It was stated that the country owes a debt of gratitude to the temporary Coast Guard Reservists, "but they are not to be classed as ex-servicemen, who were actually uprooted from their civilian occupations and subjected to the rigors of full-time military training and combat. It is to the latter group that Congress intended to provide employment preference in Government service." 93 Cong. Rec. 7315. The need for clarification of § 2 was said to be the confusion created by the lower court decisions in the instant cases.

their own request; they received no military pay and very few allowances; they could not be transferred away from their homes without their consent. They were therefore able to retain the essential elements of their civilian life. As to them, there was no problem of reemployment or rehabilitation caused by their military service. They are not among the "ex-servicemen" whom Congress desired to assist by means of the Veterans' Preference Act.

One other matter remains. Respondents claim, and the Court of Appeals held, that they acquired vested preference rights under § 18 of the Act. In pertinent part, § 18 provides that "this Act shall not be construed to take away from any preference eligible any rights heretofore granted to or possessed by, him under any existing law, Executive order, civil-service rule or regulation, of any department of the Government or officer thereof." It is said that the Civil Service Commission's ruling of April 4, 1944, extending preference rights under the then existing laws to those who had performed service with the Volunteer Port Security Force, gave respondents vested rights which were preserved by § 18 when the Veterans' Preference Act was subsequently enacted.

This contention is without substance. Veterans' preference rights by their very nature do not accrue until one has become a veteran through separation from the armed forces. On June 27, 1944, when the Veterans' Preference Act became law, neither of the respondents had as yet disenrolled from the Volunteer Port Security Force. In fact, respondent Hubickey had not even enrolled by that date. Thus they could not be classed as veterans or ex-servicemen, whatever definition be given those terms, on June 27, 1944, and they could not have earned any veterans' preference rights prior to that date. The Commission's ruling of April 4, 1944, did no more than inform respondents that they would be entitled to veterans' pref-

erence upon disenrollment, provided such ruling was lawful and still in effect. It did not purport to give them preference rights as of April 4, 1944, or to cause those rights to accrue before disenrollment. Since they did not possess and had not been granted any such rights under prior law, respondents were completely unaffected by the provisions of § 18. That section was primarily designed to perpetuate preferences granted earlier to veterans who had served in the armed forces during peacetime and who were then in government employment or on civil-service registers.[16] Respondents were obviously not veterans of that type.

Reversed.

MR. JUSTICE DOUGLAS dissents.

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[16] See S. Rep. No. 907, 78th Cong., 2d Sess., p. 2; H. R. Rep. No. 1289, 78th Cong., 2d Sess., p. 3. The Veterans' Preference Act does not grant benefits to future peacetime veterans.